that in consideration of the defendant spending money in improving the premises the landlords would not increase the rent of $40 per month. In conformity with this agreement, no increase of rent had been made by the 1st, 2nd and 3rd plaintiffs or their predecessors in title. On the basis of the evidence, there could be no equity in favour of the defendant.

The learned District Judge did not award double rent to the plaintiffs at the rate of $80 per month. In my view, section 17(4) of the Civil Law Act applies, and the provision is as follows:

"Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not."

In terms of this provision, once there is a holding over of a tenancy of a property, the landlord is entitled to double rent until possession is given or double the value during the period of detention of the property. Counsel for the defendant submitted that there was no wilful holding over by the defendant of the said premises and therefore the plaintiffs were not entitled to double rent or double the value. He relied on the case of *French* v. *Elliot*.[6] There, the Court in England held that the tenant holding over after the determination of his tenancy did not do so wilfully within the meaning of the Landlord and Tenant Act, 1730 and accordingly the claim against him for double value failed. The claim in that case was based on section 1 of the Landlord and Tenant Act, 1730 which reads as follows:

"1. In case any tenant or tenants for any term ... shall wilfully hold over any lands, tenements, or hereditaments after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his or their landlords or lessor or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, ... then and in such case, such person or persons so holding over shall, for and during the time he, she and they shall so hold over ... pay to the person or persons so kept out of possession, ... at the rate of double the yearly value of the lands, tenements, and hereditaments so detained."

Section 17(4) of the Civil Law Act is quite different; it is not a requirement under this provision that there should be a wilful holding over on the part of a tenant, as was the requirement under section 1 of the Landlord and Tenant Act, 1730. The case cited therefore is of no assistance to me. I therefore held that the plaintiffs were entitled to double rent or double the value at the rate of $80 per month from December 1, 1980 and I accordingly varied the order made by the learned District Judge.

Order accordingly.

Solicitors: *Andrew Ee & Co.; Hameed & Co.*

JOHN C. FLEMING & ANOR. v. SEALION HOTELS LTD.

[O.C.J. (Thean J.) June 15, 1987]
[Singapore – Suit No. 3958 of 1981]

Hotel – Theft of jewellery in hotel room – Innkeeper's strict liability at common law – Whether plaintiff hotel "guests" or "travellers" – Whether plaintiff had used ordinary care that prudent person may reasonably be expected to have taken under circumstances – Innkeepers Act (Cap. 36, 1970 Ed., now Cap. 139, 1985 Ed.), ss. 3 & 5.

Innkeepers – Strict liability at common law – Theft of jewellery in hotel room – Whether plaintiffs hotel "guests" or "travellers" – Whether plaintiff had used ordinary case that prudent person may reasonably be expected to have taken under circumstances.

Innkeepers – Exhibition of notice of section 3, Innkeepers Act (Cap. 36, now Cap. 139, 1985 Ed.) – Whether notice exhibited in conspicuous part of inn.

The plaintiffs with their 6-year old son came to Singapore on August 20, 1980. The first plaintiff came here to take up the appointment of general manager of Caterpillar Far East, and the office had made prior reservation of rooms in the Hyatt Regency Hotel ("the Hotel") for him and his family.

The plaintiffs took three rooms, Rooms 1247, 1248 and 1249. The middle Room 1248 had adjoining doors to Rooms 1247 and 1249, respectively. For security reason, the plaintiffs used one entrance at all times for entry and exit. The front doors to Rooms 1247 and 1249 were chain-locked and they returned the keys to these rooms to the Hotel. They retained only the key to Room 1248 which they used for the purpose of entry and exit.

The plaintiffs and their son stayed at the Hotel for about 1½ months, *i.e.* from August 20 to October 7, 1980, while awaiting and looking for suitable residential accommodation.

Shortly after the plaintiff had checked into the Hotel, they applied for and were allotted two safe deposit boxes, one for each, which they used to put their jewellery and important documents. At the time of application for the deposit boxes the first plaintiff asked for a private room for use for putting in and removing articles from the safe deposit boxes in privacy but was told that there was no such room. Hence, every time they made use of the safe deposit

boxes, the boxes were opened at the counter and articles were taken from or put in in full view of the people around the area.

The plaintiffs kept their jewellery locked in a small velvet covered box and they kept this box in a drawer of the dressing table in their hotel room. On September 1, 1980, the second plaintiff took with her the items of jewellery which were in the jewellery box when she went down to meet her friends. Whilst she was downstairs, she did not put the jewellery in the safe deposit box as there was a big tourist group and it was very crowded at the safe deposit box counter. She went back to her room and put the items of jewellery back into the jewellery box, in the drawer of the dressing table. She remained in her room with her son until about 4 p.m. when an estate agent called and asked her to view an apartment at Pearl's Bank. She and her son left the Hotel with the estate agent, but she did not bring along with her any of the items of jewellery in the jewellery box. The first plaintiff returned to the Hotel soon thereafter. On entering Room 1248, he heard a noise in the adjoining Room 1249, but when he went into Room 1249 he did not find anyone there. Shortly thereafter he left to join his wife. The plaintiffs returned later to the Hotel and did not leave their rooms that night.

On the following morning the plaintiffs discovered that the jewellery box, with its contents, was missing. A small amount of cash was also missing. The theft was reported to the hotel authorities.

About a month later, when the plaintiffs were packing their belongings with a view to moving out, they found to their surprise the jewellery box in a cubby hole in Room 1249 covered by their clothings. The box was empty, smashed and broken.

The stolen jewellery and cash were never found. The plaintiffs' approaches to the Hotel to settle their claim met with negative response. In October 1981 they initiated proceedings against the defendants, who were the owners and keepers of the Hotel at the material time. The plaintiffs claimed (a) that the defendants as innkeepers had failed to keep the property of the plaintiffs safely; (b) that the servants or agents of the defendants had been negligent in failing to provide an adequate system of security and in failing to take adequate and necessary precautions to avoid the loss. The plaintiffs relied on the doctrine of *res ipsa loquitur*.

The defendants resisted the plaintiffs' claim and contended, *inter alia*, that (a) the plaintiffs were not travellers and guests of the Hotel but were lodgers and therefore the defendants were not liable to the plaintiffs as innkeepers; (b) the loss was brought about by the plaintiffs' negligence in failing to place the jewellery box in the safe deposit boxes provided by the defendants, and (c) the defendants being innkeepers had at all material times displayed a copy of the provisions of section 3 of the Innkeepers Act (Cap. 36, now Cap. 139, 1985 Ed.) (the Act) in accordance with section 5 of the Act.

The main issues before the court were (a) whether the plaintiffs were at the material time guests of the Hotel; (b) whether the plaintiffs had used ordinary care that a prudent person may reasonably be expected to have taken under the circumstances.

Held, allowing the plaintiffs' claim: (1) at common law, the proprietor of a Hotel, as innkeeper, is an insurer of the property of his guests which is lost or stolen within the hospitum of the inn and is under the same liability to make good his guests any damage to his guests' property brought to the Hotel as he would if the goods were lost. Such liability is a strict one: it arises without proof of negligence on the part of the innkeeper;

(2) in this case, the defendants would be under such liability in relation to the plaintiffs' loss if the plaintiffs at the material time were travellers and guests of the Hotel;

(3) the word "travellers" had undergone extensive changes and had been held to include any person who stopped by at a hotel to take refreshment and food;

(4) for the purpose of founding the strict liability of the defendants as an innkeeper the plaintiffs were at the material time guests of the Hotel;

(5) having regard to all the circumstances of the case, the plaintiffs had acted prudently in taking care of their property, and the loss was not caused by the negligence of the plaintiffs or either of them;

(6) the defendants had not discharged the burden of proving that the requirements of section 5 of the Act had been satisfied at the material time and the benefit of section 3 was therefore not available to them;

(7) the defendants by their servants were plainly negligent in failing to look after the keys for their guests. The unauthorised person or persons who gained access to the rooms occupied by the plaintiffs must have obtained the key at that counter by quoting the room number, and the person in charge at the counter at the material time negligently parted with the key;

(8) in the result, the plaintiffs had succeeded in establishing their claims against the defendants and an interlocutory judgment be entered against the defendants with damages to be assessed by the Registrar.

Cases referred to:

(1) *Robins & Co.* v. *Gray* [1895] 2 Q.B. 501, 503 to 504.
(2) *Winkworth* v. *Raven* [1931] 1 K.B. 652, 657;
(3) *Orchard* v. *Bush & Co.* [1898] 2 Q.B. 284.
(4) *Williams* v. *Linnitt* [1951] 1 K.B. 565.
(5) *Shacklock* v. *Ethorpe Ltd.* [1939] 3 All E.R. 372, 374.

CIVIL SUIT.

Dennis Singham for the plaintiffs.
Y.M. Jumabhoy for the defendants.
Ms. Rokiah Osman holding a watching brief for Hyatt Regency Hotel, Singapore.

Cur. Adv. Vult.

Thean J.: The plaintiffs are husband and wife, and they came to Singapore with their son, then aged 6, on August 20, 1980. The 1st plaintiff came here to take up the appointment of general manager of Caterpillar Far East, and the office had made

prior reservation of rooms in the Hyatt Regency Hotel ("the Hotel") for him and his family. Hence, upon arrival, they proceeded direct to the Hotel. The plaintiffs were accorded "VIP check-in," they were met on arrival by the sales manager who escorted them to their rooms. The plaintiffs took three rooms on the 12th floor of the Hotel, namely, Rooms 1247, 1248 and 1249, the middle room 1248 with adjoining doors to Rooms 1247 and 1249, respectively. They made use of Room 1249 as the master bedroom, Room 1248 as the sitting room and Room 1247 as the bedroom for their son. The 1st plaintiff proposed for security reason to use one entrance at all times for entry and exit. Accordingly, the front doors to Rooms 1247 and 1249 were chain-locked by them and they returned the keys to these rooms to the Hotel, retaining only the key to Room 1248, which they used as the sitting room and also for the purpose of entry and exit. The plaintiffs and their son stayed at the Hotel for about 1½ months, that is, from August 20 to October 7, 1980, while awaiting and looking for suitable residential accommodation.

Shortly after the plaintiffs had checked into the Hotel, they applied for and were allotted two safe deposit boxes, one for each, which they used to put their jewellery and important documents. The counter serving the safe deposit boxes was also the cashier's counter. It was very open, facing the coffee house and near to the shopping arcade. Near to the counter, there was a circular seat where visitors would sit while waiting for people. At the time of application for the deposit boxes, the 1st plaintiff asked whether a private room would be available for use for putting in and removing articles from the safe deposit boxes in privacy. He was told that there was no such room. Hence, every time they made use of the safe deposit box or boxes, the boxes were opened at the counter and articles were taken from or put in in full view of the people around the area.

The plaintiffs also had a jewellery box which they normally carried when they travelled; it was a small velvet covered box made of plywood with a key lock. They put some items of their jewellery in this box which they locked. They kept this box in a drawer of the dressing table in Room 1249. On August 31, 1980, the plaintiffs attended a function in the evening and both of them wore some items of jewellery. When they returned to the Hotel it was late that night and the plaintiffs put these items of jewellery in their jewellery box. The next morning, the 1st plaintiff left for work, and the 2nd plaintiff remained in the room; their son was not with them, as he had stayed with their friends the previous night. At about 10.30 a.m., their friends brought their son back and the 2nd plaintiff went downstairs to meet them. When she went down, she took with her the items of jewellery which were in the jewellery box. All of them went to the coffee house for a snack. They were there for about an hour. Whilst she was downstairs, she did not put the jewellery in the safe deposit box as there was a big tourist group and it was very crowded at the safe deposit box counter. She felt highly inconvenient to do so. She therefore went back to her room and put the items of jewellery back into the jewellery box, in the drawer of the dressing table. She remained in her room with her son until about 4 p.m. when an estate agent called and asked her to view an apartment at Pearl's Bank. She and her son then left the Hotel with the estate agent, but she did not bring along with her any of the items of jewellery in the jewellery box as she was going out with a stranger. Soon thereafter, the 1st plaintiff returned to the Hotel, and that was about 4.30 p.m. On entering Room 1248, he heard a noise in the adjoining Room 1249, but when he went into Room 1249 he did not find anyone there. He also went out and saw no one at the corridor. Shortly thereafter, he got a telephone call from his wife, requesting him to join her at an apartment in Pearl's Bank, and thereupon, he left. He went there by car, and drove himself. The 1st plaintiff met his wife and son at the apartment. Having viewed the apartment, they left for the airport as the 1st plaintiff had to pick up his colleague arriving in Singapore. After picking up his colleague at the airport, the 1st plaintiff drove straight to the Hotel, dropped his wife and son there and then took his colleague to the Sheraton Hotel, where the latter had a room reservation. After he had dropped his colleague he returned to the Hotel. The plaintiffs did not leave their rooms that night.

On the following morning, when the 1st plaintiff was getting ready to leave to attend a meeting with the Economic Development Board, he asked the 2nd plaintiff for his gold watch and cufflinks. According to the 2nd plaintiff, these items were in the jewellery box and she therefore looked for it in the drawer of the dressing table in Room 1249. To her surprise, she discovered for the first time that the jewellery box, with its contents, was missing. On discovering this, the 1st plaintiff looked around for the box and noticed that their suit cases in the room had been re-arranged. In addition to the jewellery the plaintiffs also found that

they had lost a small amount of cash which the 1st plaintiff put in a pouch in one of the cubby holes in Room 1248. The pouch was found but the cash was missing. The 1st plaintiff immediately telephoned the security officer and the assistant manager of the Hotel, informed them of the theft and requested them to telephone the police. A few minutes later, the assistant manager arrived. The 1st plaintiff asked him to call the police, however the latter declined; the 1st plaintiff insisted, but to no avail. According to him, the assistant manager said that the plaintiffs would have to go to the police station to make a personal report. As the 1st plaintiff had to leave urgently for his meeting, he telephoned his secretary to come to the Hotel to keep his wife company and he instructed his wife that the police must be called and that she was not to leave the room until the police arrived. According to the 2nd plaintiff, the assistant manager or the security officer did not even allow her to telephone the police from the Hotel and also declined to call the police. Pausing here, I must say that I find such conduct or behaviour of the assistant manager and security officer most extraordinary and indefensible. The normal and natural reaction of any person in the position of the assistant manager or the security officer would be to call the police immediately. This place of evidence did not appear to me to have been disputed or even challenged by the defendants; nor was any explanation given as to why the assistant manager and his staff behaved in that odd manner as they did. Eventually, however, after the 1st plaintiff's secretary arrived, the 2nd plaintiff telephoned the police and spoke to one Inspector Ho who subsequently came and conducted an investigation, which however did not produce any fruitful result.

About a month later, when the plaintiffs were packing their belongings with a view to moving out, they found to their surprise the jewellery box in a cubby hole in Room 1249 covered by their clothings, but the box was empty. It was smashed and broken. It was subsequently handed over to the police but no significant clue was detected.

The stolen jewellery and cash were never found. The plaintiffs' approaches to the Hotel to settle their claim met with negative response. Hence, in October 1981, they initiated proceedings against the defendants, who were the owners and keepers of the Hotel at the material time. The plaintiffs claim, firstly, that the defendants as innkeepers had failed to keep the property of the plaintiffs safely. Secondly, they claim against the defendants for negligence by their servants or agents in failing to provide an adequate system of security and in failing to take adequate and necessary precautions to avoid the loss, and in respect of this claim, the plaintiffs also rely on the doctrine of *res ipsa loquitur*. Both heads of claim are resisted by the defendants and their defences are as follows:

(a) the plaintiffs were at the material time not travellers and guests of the Hotel but were lodgers, and the defendants were therefore not liable to the plaintiffs as innkeepers;

(b) the loss was brought about by the plaintiffs' own negligence in leaving the jewellery in unlocked drawer in the room and in failing to place them in the safe deposit boxes provided by the defendants;

(c) the defendants being innkeepers had at all material times displayed a copy of the provisions of section 3 of the Innkeepers Act (Cap. 36, now Cap. 139, 1985 Edition) in accordance with section 5 of the Act, and

(d) the defendants deny that their servants or agents were guilty of any negligence in relation to the loss of the jewellery and cash.

The items of jewellery and the small amount of cash which were lost were particularised in the statement of claim. There was hardly any dispute of the facts (i) that the theft had occurred and (ii) that the plaintiffs had lost those items and the cash. No suggestion was ever made on behalf of the defendants that the plaintiffs did not lose any of the items of jewellery or that the theft did not occur at the Hotel. Counsel for the defendants candidly admitted that the integrity of the plaintiffs was not in issue and the disputes were centred on the question of liability of the defendants and the quantum of loss, *i.e.* the value of the items of jewellery lost. At the early stage of the trial I suggested, and both counsel agreed, that I should determine the question of liability and leave the quantum to be assessed later, if liability is established.

The first defence is directed to the claim against the defendants as innkeepers of the Hotel. At common law, the proprietor of a hotel, as an innkeeper, is an insurer of the property of his guests which is lost or stolen within the hospitum of the inn and is under the same liability to make

good to his guests any damage to his guests' property brought to the hotel as he would if the goods were lost. Such liability is a strict one: it arises without proof of negligence on the part of the innkeeper: see paragraph 1226 of Volume 24, *Halsbury's* Laws of England (4th edn.). Lord Esher M.R. in *Robins & Co.* v. *Gray*[1] at page 503-504 said:

"... The duties, liabilities, and rights of innkeepers with respect to goods brought to inns by guests are founded, not upon bailment, or pledge, or contract, but upon the custom of the realm with regard to innkeepers. Their rights and liabilities are dependent upon that, and that alone; they do not come under any other head of law. What is the liability of an innkeeper in this respect? If a traveller comes to an inn with goods which are his luggage – I do not say his personal luggage, but his luggage – the innkeeper by the law of the land is bound to take him and his luggage in. ...

Then the innkeeper's liability is not that of a bailee or pledgee of goods; he is bound to keep them safely. It signifies not, so far as that obligation is concerned, if they are stolen by burglars, or by the servants of the inn, or by another guest; he is liable for not keeping them safely unless they are lost by the fault of the traveller himself. That is a tremendous liability: it is a liability fixed upon the innkeeper by the fact that he has taken the goods in; and by law he has a lien upon them for the expense of keeping them as well as for the cost of the food and entertainment of the traveller."

Similar pronouncement was made by Swift J. in *Winkworth* v. *Raven*[2] at page 657:

"... An innkeeper is commonly said to be an insurer of goods of the guest brought to the inn against loss by theft. This is, I think, substantially accurate, because an innkeeper undertakes by the common law that the goods of his guest shall not be stolen by his default and, if loss of the goods occurs, it is to be presumed that the goods have been stolen by failure of the innkeeper to take proper care of them unless he can show (a) that the guest retained control in such a way that he relieved the innkeeper from his duty to take care of them or, (b) that the loss occurred by negligence of the guest, or by (c) the act of God or the King's enemies."

In this case, the defendants would be under such liability in relation to the plaintiffs' loss if the plaintiffs at the material time were travellers and were guests of the Hotel. It was argued on behalf of the defendants that the plaintiffs upon arrival in Singapore had come to the end of their journey, and when they checked into the Hotel and stayed there whilst awaiting and looking for suitable residential accommodation they were no longer travellers and were not guests of the Hotel, but were lodgers. I am unable to accept this argument. Throughout the development of this branch of the law the word "travellers" had undergone extensive changes and had been held to include any person who stopped by at a hotel to take refreshment and food. Thus, in *Orchard* v. *Bush & Co.*,[3] a person who on his way home stopped at a hotel for a meal and lost his overcoat there was held to be a traveller and the hotel proprietor was liable for the loss of the coat without any proof of negligence. Wills J. said, at page 287:

"I think a guest is a person who uses the inn, either for a temporary or a more permanent stay, in order to take what the inn can give."

Kennedy J. said, at page 289:

"... It was said that the plaintiff in the present case was not a traveller. The authorities give no definition of what is a traveller; but, looking at the reason of the thing, I should have thought that any person, who was neither an inhabitant of the house nor a private guest of the innkeeper or his family, but who came into the house as a guest to get such accommodation as it afforded and he was willing to pay for, was a traveller. It does not seem to me to make any difference whether his journey be a long or a short one. I agree that, on the facts of this case, the plaintiff was a traveller; but, apart from the question whether he was a traveller or not, I am of the opinion that if a man is in an inn for the purpose of receiving such accommodation as the innkeeper can give him, he is entitled to the protection the law gives to a guest at an inn. I agree with what is said in the notes of *Calye's Case:* 'It is not necessary in order that a man may be a guest, so as to fix the innkeeper with this sort of liability, that he should have come for more than a temporary refreshment.' I think the judgment in the county court was right."

That statement of law of Kennedy J. was accepted by Lord Tucker in *Williams* v. *Linnitt*,[4] where the plaintiff on returning home in his motor car passed his own home and went to the inn and had drinks with friends there. He parked his car at the car park of the inn. On his leaving the inn one hour later, he found that the car had been stolen. It was held by the Court of Appeal in England that the plaintiff was a traveller for the purpose of the defendant's liability as an innkeeper at common law and that the car park was within the hospitum of the inn. The Court of Appeal held that a person who travelled to the inn from his own residence for a meal or drink and travelled back to his residence afterwards was a traveller for the purpose of founding the strict liability of the innkeeper for loss or damage to goods of his guests. Asquith L.J. (as he then was) said, at page 579:

"So again in *Orchard* v. *Bush & Co.* [1898] 2 Q.B. 284, the plaintiff was held entitled to enforce the special obligations resting on an innkeeper when he stopped at the inn for a meal when en route from his office in Liverpool to his residence some miles outside it. I cannot persuade myself, that if this is so, a person, who travels to an inn

from his own residence for a meal or a drink and travels back to his own residence afterwards, is not a 'traveller' also."

Denning L.J. (as he then was) also dealt with this point; he said, at pages 583-584:

"In *Bennett* v. *Mellor* 5 Term Rep. 273 a man was on a journey in the sense that he had come into Manchester on a market day and was on his way to his home in the country, but he had no intention of staying the night and he only had a drink at the inn. Yet it was held that the relationship of innkeeper and guest arose. The effect of that case was stated by Mr. J.W. Smith in 1837 in the first edition of his Leading Cases in these words: 'It is not necessary in order that a man may be a guest, so as to fix the innkeeper with this sort of liability, that he should have come for more than a temporary refreshment.' That note has been retained untouched by all subsequent editors, including Willes and Keating JJ., and Lord Collins, and has been accepted as good law for more than a hundred years. It was quoted and adopted by Kennedy J., in *Orchard* v. *Bush* [1898] 2 Q.B. 284 and cannot now be called in question. Mr. Elwes [counsel for the defendant] did not, indeed, question it, but he said that it must be confined to a man who was a traveller in the ordinary sense of the word, that is, he must at least be on a journey of some kind or other, be it only a journey from his office to his home, and that it was not sufficient if he was merely a local resident dropping in for a drink. ...

But upon reflection I do not think that we can take that view. Once it is accepted that a man, who comes for temporary refreshment whilst on a journey, is a traveller, there is no practical way of distinguishing him from the local resident. Just as the old lawyers of the sixteenth century found that they could not dismiss the neighbour unless he came as an invited friend of the innkeeper, so we cannot dismiss the local resident unless he comes as an invited guest, and for the selfsame practical reason: that the innkeeper may often not know whether the man is a local resident or not, or whether he is on a journey or not; and the innkeeper has no right to ask him for those particulars."

Turning to the facts of this case, it is true that the plaintiffs on arrival at Singapore had reached their destination; they were not proceeding to anywhere. They went straight to the Hotel. Adopting the words of Kennedy J. here, they were neither inhabitants of the Hotel nor private guests of the defendants, but they went there and obtained such accommodation as the Hotel could provide and did provide. They arrived at the Hotel as guests and were taken in as guests of the Hotel, and, in my view, they remained there as guests at all material times. They were not establishing any form of permanent residence at the Hotel; they were using it like "a wayfarer or transient," they were of course not wayfarers or transients but the analogy is, in my view, apt. They stayed there temporarily while awaiting and looking for suitable residential accommodation. In my judgment, for the purpose of founding the strict liability of the defendants as an innkeeper the plaintiffs were at the material time guests of the Hotel.

The next question is whether the loss was brought about by the negligence of the plaintiffs themselves, and the test here is whether the plaintiffs had used ordinary care that a prudent person may reasonably be expected to have taken under the circumstances. In *Shacklock* v. *Ethorpe, Ltd.*,[5] Lord Macmillan said:

"... It has always been the law, however, that the innkeeper can escape liability if he can show that, as Erle, J., delivering the judgment of the court in *Cashill* v. *Wright* (1856) 6 E. & B. 891, said, at p. 900:

'... the negligence of the guest occasions the loss in such a way as that the loss would not have happened if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances.' The word 'negligence' is tending in modern legal usage to be restricted to denoting the breach of a duty owed to some other person, but it is not in this correlative sense that the word is used in the present context. The innkeeper's defence is not based on the breach of any duty owed to him by his quest, but simply on the plea that the loss or theft of his guest's property was due to the guest's own carelessness, his own failure to take reasonable care of it. It is technically inaccurate to speak of the guest's contributory negligence."

In that case, the plaintiff was a guest at the hotel owned and kept by the defendant, and while she was staying there her jewels and cash were stolen from her bedroom. On the day of the theft she placed her jewels and cash in a jewel case which was in turn placed in a dressing case which she also locked. When she left the hotel she did not lock the door of her bedroom or hand the key at the office. Later, when she returned, she found that the dressing case had been broken and the jewel case stolen. She claimed against the defendant as innkeeper for the loss of her jewels and cash. Greaves-Lord J. who heard the case held that, on the facts, the plaintiff had not failed to take care of her property by not depositing it at the office of the hotel. On appeal, the Court of Appeal reversed his decision on this point, but on further appeal, the House of Lords restored the decision of Greaves-Lord J. and held that the trial judge, on the facts before him, was fully justified in reaching the conclusion as he did.

The question here is one of fact. The plaintiffs upon their arrival at the Hotel took the following precautions: they chain-locked the front doors of Rooms 1247 and 1249 and returned the keys to these rooms to the Hotel retaining only the key to Room 1248; they used only Room 1248 for the

purpose of entry and exit; they applied for and obtained two safe deposit boxes for their jewellery and important documents. But the counter at which they put in and removed their jewellery or other articles from the safe deposit boxes was the same counter used by the Hotel's cashier; it was in an open area where lots of people were around. Such an area was wholly unsuitable for the provision of such service or facility. Any prudent person would find it highly inconvenient to make use of such facility. The plaintiffs said they felt "uncomfortable" in opening their safe deposit box or boxes with so many people around the area, and understandably, because of the lack of privacy, there must have been some reluctance on their part to make use of the safe deposit boxes. The 1st plaintiff said that initially they did put their "possessions" in the safe deposit boxes, and during the first few days of their stay at the Hotel, whenever they wished to change those items of jewellery they were wearing they would open their safe deposit boxes and exchange them for some of the items in the boxes. But because of the lack of privacy at the counter, they felt "uncomfortable" to use the safe deposit boxes. They decided not to put those items which they wore regularly into the safe deposit boxes so as to minimise the opening of the boxes. The 1st plaintiff at the time when he applied for the safe deposit boxes enquired whether a private room was available for use when they put in or removed articles from the safe deposit box or boxes and was told that such a room was not available. This was denied by two witnesses for the defendants: DW1, who was then the assistant front-office manager, and DW2, the chief security officer at that time. Both of them said that such a private room was available. For reasons which I shall give shortly, when I deal with their evidence, I find their evidence unreliable and I have no hesitation in rejecting it. At any rate, they were not the persons in charge of safe deposit boxes at the time and no such person was called by the defendants to give evidence.

The 2nd plaintiff said that the items of jewellery which were stolen included items taken out from the deposit box two days before the incident as they had occasion to use them. These stolen items, or some of them, were worn by the plaintiffs on the night of August 31, 1980, and when they returned to the Hotel, it was too late to put them into the safe deposit box. All these items were handed over to the 2nd plaintiff who put them in the jewellery box in the room. On the following day, at about 10.30 a.m., when the 2nd plaintiff came down and met her friends and had coffee in the coffee house she had the jewellery with her, and it did occur to her to put the jewellery in the safe deposit box. But she was deterred from so doing by reason of a crowd of people around that area. So she returned to her room and put the jewellery back into the jewellery box as she did not expect to go out that day. Later in the afternoon, at about 4.00 p.m., an estate agent called, requesting her to go and view an apartment at Pearl's Bank. As she thought she would be away for a short while, she decided to leave her jewellery in the jewellery box in the drawer of the dressing table in Room 1249. Also she decided not to bring the jewellery with her because she was going out with a stranger.

During their stay at the Hotel, the plaintiffs had taken a further precaution. Whenever they left the Hotel they made it a point of leaving the key to their rooms with the person in charge at the counter in the lobby; they did not merely leave it on the top of the counter. In fact, the 1st plaintiff said that on one occasion when he sought to hand the key to the person in charge at the counter he was asked to leave it at the counter, but he insisted that the person should personally take it. This again was not challenged on behalf of the defendants.

It was suggested on behalf of the defendants that the plaintiffs could have avoided the loss by putting all their jewellery in the safe deposit box or boxes. But that is not the question. The true question is whether the plaintiffs in not putting the jewellery in the safe deposit box had failed to take the ordinary care which a prudent person might reasonably be expected to take in the circumstances. This clearly is the approach adopted by Lord Macmillan in *Shacklock* v. *Ethorpe Ltd. (supra)* when he said, at p. 376:

"Greaves-Lord, J., with all the facts before him, came to the conclusion that, in the circumstances, the appellant had not failed in the care of her property by not depositing it in the office. The Lords Justices took the contrary view. Greer L.J. said:

> 'It seems to me quite clear that, if she had deposited her valuable jewellery in the office, had taken her jewellery case or her bag which contained her valuables to the office, no thief could have got at the place where they would have been put – namely, the safe which in fact exists in the office.'

This is true, but it is not the question, which is whether the appellant in not so depositing her jewellery had failed to take the ordinary care which a prudent person might reasonably be expected to take in the circumstances."

In my judgment, having regard to all the circumstances of the case, the plaintiffs had acted prudently in taking care of their property, and I therefore find that the loss was not caused by the negligence of the plaintiffs or either of them.

I now turn to the third defence raised by the defendants: the defendants invoked the provisions of section 3(1) of the Innkeepers Act (Cap. 36, now Cap. 139, 1985 edn.), which, if applicable, would limit their liability as the innkeepers to a sum of $500 for the loss sustained by the plaintiffs. Section 3(1) provides as follows:

"3.-(1) No innkeeper shall be liable to make good to his guest any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto or any car or carriage, to a greater amount than the sum of $500, except –

(a) where the goods or property have been stolen, lost or injured through the wilful act, default or neglect of the innkeeper or any servant in his employ; or

(b) where the goods or property have been deposited expressly for safe custody with the innkeeper or his manager."

The benefit of section 3(1), however, is only available if the defendants had at the material time exhibited in a conspicuous part of the hall or entrance of the Hotel a copy of the provisions of section 3 printed legibly in English as required by section 5 of the Act. The provision of section 5 is as follows:

"5. Every innkeeper shall cause at least one copy of section 3 printed in plain type in English to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this Part in respect of the goods or property only as are brought to his inn while such copy is so exhibited."

The burden that the provision of section 5 has been satisfied rests with the defendants. The defendants sought to prove this by relying on the evidence of DW1, who at the material time was the assistant front-office manager of the Hotel, and DW8, who at the material time was the assistant security manager. DW1 said that there was "a notice of Innkeepers Act on the reception desk – at the lobby and facing outwards where the guests could see." The notice, according to him, was 14 inches by 7 inches to 8 inches and the words were written legibly. He said: "That is a standard notice seen in all hotels. This notice is open to everyone to see at the counter." Having said that, he later produced a form of notice displayed at the reception desk. But he admitted that that was not the form on display in 1980 but was similar to the form used in 1980. He also produced a form of registration, D1, and a form of passport for identification of a hotel guest, D2; he first said that these were the forms in use at the material time, but on being further questioned, he said that the forms used in 1980 contained texts similar to those found in D1 and D2; in other words, the forms, D1 and D2, were not those used in 1980. I find the evidence of DW1 on these matters astonishing. This incident occurred in September 1980, and it must have been obvious to the defendants then or soon thereafter, when they decided to resist the claim, that these documents, and particularly the notice under section 5 of the Act said to be on display at the reception desk, would be essential to their defence. Yet, not one of these, if at all they existed at that time, were preserved; nor was any explanation given as to why they are not available now. DW 1 then gave evidence of the plaintiffs' arrival. He said that when the plaintiffs arrived, they were escorted to the desk where a clerk brought out a card for express check-in and handed over the keys to them and informed a hotel personnel to escort them to the rooms to register upstairs. The 1st plaintiff, according to him, did not fill in any form at the counter downstairs. However, on being further questioned, he said he was not present when they arrived. As a witness, DW 1 appeared to be prepared to give evidence on matters irrespective of whether he had personal knowledge or otherwise. Yet on matters which plainly he should know, he conveniently said he could not remember. He was far from forthright in his evidence; I find his evidence most unsatisfactory, and I reject his evidence on the display of the notice under section 5 of the Innkeepers Act. As for the evidence of DW 8 on this point, I find it scanty and I do not accept it. Accordingly, the defendants have not discharged the burden of proving that the requirements of section 5 of the Act had been satisfied at the material time and the benefit of section 3 is therefore not available to them.

I now turn to the last question: whether the defendants were guilty of negligence which caused the loss to the plaintiffs. On the morning of September 2, 1980, when the theft was discovered, the security officer and the assistant manager of the Hotel went up to the rooms to investigate. It was not disputed that the doors to the rooms and the locks to all the rooms were intact. There was no question of any burglary or break in. The theft therefore could only have been committed by an unauthorised person or persons who by

some means obtained possession of the key to the rooms and used it to gain entry into the rooms while the plaintiffs were out. On the evidence, the inference is that the theft was committed probably in the afternoon of September 1, 1980, after the 2nd plaintiff had left the Hotel with her son to view the apartment and before the 1st plaintiff returned to the Hotel or after the 1st plaintiff had left to join his wife and son at the apartment in Pearl's Bank. The question is how such an unauthorised person or persons could have obtained the keys. The chambermaids who cleaned the Rooms 1247, 1248 and 1249 during the material time were called and they all testified that they had the floor master keys and there was no evidence that their keys were lost or misplaced at that time. It seems to me that the other source, and in fact the only source, where such an unauthorised person or persons could have obtained the key to the rooms was the counter at the lobby which kept the keys for the guests of the Hotel. The evidence of the plaintiffs shows that the counter was very lax in taking care of the keys. Both the plaintiffs said in evidence that whenever they left the Hotel they handed the key to the counter and they made sure that the person in charge at that time took hold of the key. On each occasion, when they returned and when they asked for the key, they merely had to quote the room number and the key was given to them; no one seemed to be concerned with identification of the person who so asked for the key. The person in charge just handed the key to anyone who quoted the room number. This piece of evidence again was not disputed and indeed was not even challenged by the defendants. In this respect the defendants by their servants were plainly negligent in failing to look after the keys for their guests. It seems to me that the unauthorised person or persons who gained access to the rooms occupied by the plaintiffs must have obtained the key at that counter by quoting the room number, and the person in charge at the counter at the material time negligently parted with the key.

Quite apart from the lax control the Hotel exercised over the keys kept for their guests, the security provided at the material time was far from adequate. According to PW2, the chief security officer at the time, the Hotel had a complement of 24 men: 22 security officers, one security assistant manager and the chief security officer. They had three shifts: morning, afternoon and midnight. Each shift had six men, three in uniform and three in civilian clothes. The three uniformed personnel were on standing duty: one at the in-kiosk, one at the out-kiosk and one at the rear entrance to the Hotel. The other three officers were in civilian clothes. Two of them moved in the Hotel on an orderly basis on a vertical mobile patrol: on every hour, an officer would walk from the top floor, that is the 21st floor, down to the lower ground floor. This would take about an hour. The other officer would then start on the 21st floor and similarly move downwards. The third officer, who was a supervisor, was stationed in or around the lobby, and occasionally, he moved around and checked. Effectively, therefore, the Hotel had only two security officers at the front lobby: one at the in-kiosk and the other stationed in or around the lobby, if he did not move about to check other areas. DW 2 boldly said: "Highest standard in terms of security and service – maintained in our Hotel." He said that visitors who came to the Hotel would have to call at the counter clerk first before they could go up to see the guests on the various floors. If a visitor did not go to the counter clerk first he would be stopped by a security officer and would be directed to the counter. He further claimed that he or rather his security officer would stop every person going to the lifts and direct him to the counter clerk "under normal circumstances," unless, quoting his words, "we already know that these visitors are visitors of our Hotel guests." Such a claim was obviously far too exaggerated and unrealistic. He admitted, however, that there was only one security officer at or around the lobby and there were five lifts; he admitted also that one could gain access to the lifts at the mezzanine floor, at the third floor and also at the fourth floor, and to go to the mezzanine floor, one merely walked up the stairs. Yet he was foolhardy enough to claim that if someone who was not a *"bona fide* guest" had used the lifts at the mezzanine floor, the officer on the ground floor would be able to alert the officers on the other floors. Truly, I find the evidence of DW2 defies belief. Either he was extremely naive or he was totally ignorant of what a security officer at the lobby could or could not do. Bearing in mind that the lobby on the ground floor of the Hotel was a large area and bearing in mind there was only one or, at most, two security officers around there, it was almost impossible for him or them to detect a "non *bona fide*" guest or visitor to the Hotel at the mezzanine floor gaining access through the lifts to the other floors. It was equally impossible for him or them to prevent every visitor, who had not seen the counter clerk first, from going to the lifts and gaining access to any floor of the Hotel. The 1st plaintiff said that during their stay at the Hotel he and his wife did not have to identify

themselves before they went to the lifts, and they were never informed by the reception desk first before their guests went up to their rooms. He said that the swimming pool was on the fourth floor and people were free to go into the lifts without any check by any security officer; similarly, there was access to the lifts at the mezzanine floor and there was no check there also. This evidence does show that unauthorised persons could easily gain access to the lifts and go to any floor of the Hotel without being checked or stopped by a security officer. DW 2's exaggerated claim that the Hotel maintained the "highest standard in terms of security" is wholly unsustainable. I find that his evidence on the security arrangement unreliable.

In the result the plaintiffs have succeeded in establishing their claims against the defendants, and I order that interlocutory judgment be entered against the defendants with damages to be assessed by the Registrar. I also order that the defendants pay to the plaintiffs the costs of and incidental to this action and the assessment of damages.

On the assessment of damages, I think I ought to clarify one point. As I have said earlier, there was no dispute that the plaintiffs had lost the items of jewellery and the small amount of cash as claimed. During the trial, counsel for the defendants had cross-examined the 1st plaintiff specifically on each of the items of jewellery, and at no time was there any suggestion made that any of the items had not been lost as a result of the theft. The assessment of damages therefore is to be confined mainly to determining the value of the items of jewellery.

Claim allowed.

Solicitors: *Rodyk & Davidson; Y.M. Jumabhoy & Co.; Lim & Gopalan.*

A MALAYSIAN REPORTS

MUSTAK AHMED BIN DATO' HAJI ABDUL RAHIM GULAM RASOOL SHAIK v. ABDUL WAHID BIN DATO' HAJI ABDUL RAHIM GULAM RASOOL SHAIK & ORS. SHAFIAH BIBI BINTI IBRAHIM MYSOORY & ORS. v. ABDUL WAHID BIN DATO' HAJI ABDUL GULAM RASOOL SHAIK & ORS.

[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) September 9 & 10, 1986 & June 10, 1987]

[Kota Bharu – Supreme Court Civil Appeals No. 215 and 276 of 1985]

Islamic Law – Gift – Transfer of shares in match factory – Whether donor suffering from marz-ul-maut- Reasonable probability of death.

This was an appeal from the decision of the High Court reported at [1986] 2 M.L.J. 211. The respondents had brought an action to invalidate the transfer of shares in a match factory at an undervalue by Dato Haji Abdul Rahim Gulam Rasool Shaik (since deceased) to four of his children. It was argued in the High Court that the transfers were void under the doctrine of *marz-ul-maut*. The learned trial judge concluded that the transfers of the shares were void under the doctrine and gave judgment to the respondents as prayed. The appellants appealed.

Held, allowing the appeal: (1) the deceased was not under the apprehension of imminent death at the time he made the gifts to his four children, the illness did not incapacitate him for the pursuit of his ordinary avocations, and although the illness continued for less than a year, the facts and circumstances formed sufficient length of time to remove or lessen from his mind the apprehension of immediate death;

(2) the gift by transfer of shares to the four children was not caught by the doctrine of *marz-ul-maut* and was therefore valid under the Shariah laws.

Cases referred to:

(1) *Ibrahim Goolam Ariff* v. *Saiboo* 34 I.A. 167.
(2) *Shamshad Ali Shah* v. *Syed Hassan Shah* P.L.D. 1964 S.C. 143.
(3) *Chanan Bibi* v. *Mohd Shafi* P.L.D. 1977 S.C. 28, 34-36.
(4) *Safia Begum* v. *Abdul Rajak* A.I.R. 1945 Bom. 438.
(5) *Abdul Hafiz Beg* v. *Sahebbi* A.I.R. 1975 Bom. 165.

SUPREME COURT.

Dato H.L. Wrigglesworth for the appellant in S.C.C.A. 215/85.

C.H. Liew for the appellants in S.C.C.A. 276/85.

Varghese George for the respondents.